



**Maundu v Lexo Energy Kenya Limited (Cause E094 of 2024)
[2025] KEELRC 2297 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2297 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E094 OF 2024**

**L NDOLO, J
JULY 31, 2025**

BETWEEN

SAMMY MAUNDU CLAIMANT

AND

LEXO ENERGY KENYA LIMITED RESPONDENT

JUDGMENT

Introduction

1. This is an employment dispute, between Sammy Maundu as the Claimant, and Lexo Energy Kenya Limited as the Respondent. The Claimant states his case in a Statement of Claim, as amended on 30th April 2024. The Respondent's defence is contained in a Memorandum of Response dated 22nd October 2024.
2. At the trial, the Claimant testified on his own behalf and the Respondent called its Legal and Human Resources Manager, Kelvin Gathara. The parties also filed written submissions.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent on 16th May 2017, in the position of Head of Retail. He claims to have been asked by the shareholders to put in money in equity, which he paid in various tranches totalling USD 17,224. He adds that he was awarded staff share options worth approximately USD 913,745.
4. The Claimant accuses the Respondent of subjecting him to intolerable harassment, making the work environment so toxic that it was no longer tenable for him to continue working. He avers that he stood to lose his staff share options if he resigned from employment.
5. The Claimant contends that the Respondent's actions amount to constructive dismissal; he cites the following particulars in this regard:



- a. Setting targets for the Claimant to meet and then frustrating his way of meeting those targets, including:
 - i. Withdrawing motor vehicles from field staff under the Claimant, who need the said transport to visit outlying stations;
 - ii. Failure to maintain service stations or taking too long to address maintenance issues, sometimes as long as more than a year, a fact that led to missing of targets by the Claimant;
 - iii. Failure to address capacity issues raised by the Claimant, including taking inordinately long to replace retail staff who had exited Lexo.
 - b. Use of disrespectful and demeaning language in communication with the Claimant;
 - c. Acting in bad faith in dealing with the Claimant in an attempt to force his resignation;
 - d. Being unreasonable and unfair in the circumstances.
6. The Claimant pleads that the foregoing notwithstanding, the Respondent on 15th March 2024, by a letter of even date and during the pendency of this suit, summarily dismissed him.
7. The Claimant seeks the following remedies:
- a. A declaration that the Respondent is bound to pay him upfront the current market value of his share options plus a refund of all monies invested with the Respondent, together with interest at commercial rates;
 - b. A declaration that the Claimant is entitled to damages for constructive dismissal;
 - c. In the alternative, a declaration that the Claimant's termination from employment by the Respondent was unlawful and that he is entitled to general damages;
 - d. Costs plus interest.

The Respondent's Case

8. In its Memorandum of Response dated 22nd October 2024, the Respondent admits having employed the Claimant in the position of Head of Retail effective 16th November 2017 until 15th March 2024, when his employment was terminated. The Respondent defends the termination as lawful and fair.
9. Regarding the claim on shares, the Respondent takes the position that the Claimant ought to pursue his claim against Lexo Energy Mauritius Limited. The Respondent maintains that there is no cause of action between it and the Claimant regarding the stated transaction.
10. The Respondent points out that in all applications for fund transfers submitted by the Claimant, the beneficiary is listed as Lexo Energy Mauritius. Additionally, the Respondent points to documentation on capital call for subscription of new shares in Stitching Administrative Kantoor (STAK), showing the Claimant's participation.
11. The Respondent avers that the account to which the Claimant transferred his equity is held by Lexo Energy Mauritius Limited, whose director executed the call letters.
12. The Respondent states that the Claimant was given an award of share options in Lexo Energy Mauritius during the tenure of his employment. The share options would allow the Claimant to



purchase shares in Lexo Energy Mauritius as long as he remained an employee of one of its subsidiaries. The Claimant is said to have accepted the terms set out in the award.

13. The Respondent maintains that its relationship with the Claimant was limited to one of employer-employee, and that the shareholder relationship is strictly between the Claimant and Lexo Energy Mauritius Limited and its officials and shareholders, including STAK.
14. While acknowledging that the Claimant was awarded a salary bonus owing to exceptional performance, the Respondent points out that the award was with respect to the Claimant's performance in 2020. According to the Respondent, the Claimant did not perform at the same level in subsequent years.
15. The Respondent denies the Claimant's claim of constructive dismissal and contends that it has maintained a positive working environment for all its employees. The Respondent states that the Claimant had not raised any complaints in this regard. All the listed particulars of constructive dismissal are denied.
16. The Respondent further denies the allegation that the Claimant was edged out of his position and avers that the Claimant's employment was lawfully terminated in accordance with the Employment Act and existing internal policies.

Findings and Determination

17. There are two (2) issues for determination in this case:
 - a. Whether the termination of the Claimant's employment was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.

The Termination

18. Although in his claim, the Claimant mentions constructive dismissal, it is an undisputed fact that he did not resign from employment; resignation being a key ingredient in this mode of separation, its absence means that such a claim cannot be sustained. What is on record is that the Claimant's employment was terminated by letter dated 15th March 2024, stating as follows:

“Dear Sammy,

Re: Termination Of Employment Agreement

We refer to the above matter and your Employment Agreement dated 16th May, 2017 (the 'Agreement').

Pursuant to Clause 9 of the Agreement, Lexo Energy Kenya Limited (the 'Company') wishes to terminate the Agreement immediately and pay your salary in lieu of notice. The reason for the termination is because of an irretrievable breakdown in the working relationship with the Company.

In that regard, your final dues are as follows:

- i. Salary up to your last day of work- Kshs. 409,500.00;
- ii. One (1) month's pay in lieu of notice – Kshs. 819,000.00;
- iii. 1 accrued leave day equivalent to Kshs. 27,300.00;
- iv. Less recovery of any advance, loans and any damages to company property where applicable; and



- v. A certificate of service.

The above payments will be subject to the relevant statutory deductions.

Your certificate of service can be collected from the Human Resources Manager office as soon as you clear with the Company and handover all the Company property. Thereafter, the net pay will be transferred immediately to your bank account.

We thank you for your contribution to the Company and wish you success in your future endeavours.

Yours faithfully,

For Lexo Energy Kenya Limited

(signed)

Kelvin Gathara

Legal & Human Resources Manager”

19. This letter gives the reason for termination of the Claimant’s employment as ‘irretrievable breakdown in the working relationship with the Company’.
20. Under the *Employment Act*, every termination of employment must be supported by a valid reason. In this regard, Section 43 of the Act provides as follows:
1. In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair with the meaning of section 45.
 2. The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.
21. Section 45(1) and (2) of the Act proscribes unfair termination in the following terms:
1. No employer shall terminate the employment of an employee unfairly.
 2. A termination of employment by an employer is unfair if the employer fails to prove-
 - a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason-
 - i. related to the employee’s conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - c. that the employment was terminated in accordance with fair procedure.
22. In *Duncan Mbathi Mulevi v Wanandege Cooperative Savings & Credit Society Limited* [2018] KEELRC 281 (KLR) it was held that:
- “Under section 45(2) of the *Employment Act*, termination of an employee’s contract is unfair if the employer fails to prove that it was grounded on a valid and fair reason(s) and that it was done after following a fair procedure. A valid and fair reason is one that relates to the employee’s conduct, capacity and compatibility or based on the employer’s operational



requirements. Fair procedure on the other hand is one that accords justice and equity and basically it relates to according the employee a fair hearing before terminating his services.”

23. The fair procedure contemplated by Section 45(2)(c) is codified in Section 41 of the Act as follows:
 1. Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
 2. Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.
24. In his written submissions dated 1st April 2025, the Claimant referred to the decision in *Willie Kipkoech Langat v County Public Service Board & 2 others* [2022] KEELRC 164 (KLR) where an employer’s obligation to explain proper reasons for termination of the employment of an employee was affirmed.
25. The reason given for termination of the Claimant’s employment being; ‘irretrievable breakdown in the working relationship with the Company’ does not fall within any of the categories set out under Section 45(2)(b)(i) & (ii) of the *Employment Act*. The unsubstantiated claim of failure to follow internal grievance handling procedures made by the Respondent’s witness made no difference in this regard. Further, the Claimant was not subjected to any disciplinary process as required under Section 41 of the Act.
26. Consequently, I find and hold that the termination of the Claimant’s employment was substantively and procedurally unfair.

Remedies

27. Pursuant to the foregoing, I award the Claimant ten (10) months’ salary in compensation. In arriving at this award, I have taken into account the Claimant’s length of service and the finding that he did not contribute to the termination.
28. I have also considered that the Respondent did not disclose any valid reason for the termination and the Claimant was not availed due process.
29. Regarding the issue of shares acquired by the Claimant in Lexo Energy Mauritius Limited, the only thing to say is that the Respondent was not a party in this arrangement. All documents evidencing acquisition of the shares were in the names of the Claimant and Lexo Energy Mauritius Limited. The fact that Lexo Energy Mauritius Limited is the Respondent’s holding company does not alter this fact.
30. In its written submissions dated 16th May 2025, the Respondent made reference to the decision in *Mosi v National Bank of Kenya Limited* [2001] eKLR where it was affirmed that a holding company is a distinct legal entity from its subsidiaries. Any claim on shares is therefore to be pursued against Lexo Energy Mauritius Limited.
31. Finally, I enter judgment in favour of the Claimant in the sum of Kshs. 8,190,000 being ten (10) months’ salary in compensation for unlawful and unfair termination of employment.



32. This amount will attract interest at court rates from the date of judgment until payment in full.
33. The Claimant will have the costs of the case.
34. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. P.K Kamau for the Claimant

Mr. Wairoto for the Respondent

